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Supreme Court, U.S.
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No. 00-1268

IN THE

# Supreme Court of the United States

MEREDITH T. RANEY,

*Petitioner,*

*v.*

AWARE WOMEN CENTER, *et al.*,

*Respondents.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

## BRIEF IN OPPOSITION

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## STATEMENT OF THE CASE

Respondent Aware Women Center for Choice, Inc. (hereinafter "the clinic") is a clinic located in Melbourne, Florida, which provides a variety of reproductive health services, including abortions. In *Madsen v. Women's Health Center, Inc.*, 512 U.S. 753 (1994), this Court upheld an injunction entered by the Florida courts to protect the clinic from aggressive protestors, who had systematically impeded patients' access to the clinic and hampered the clinic's provision of health care to those who sought the clinic's services. The primary provision of the injunction upheld by this Court prohibited persons subject to the injunction from "congregating, picketing, patrolling, demonstrating or entering that portion of public right-of-way or private property within [36] feet of the property line of the Clinic." *Madsen*, 512 U.S. at 759. This Court noted that "[t]he 36-foot buffer zone protecting the entrances to the clinic and the parking lot is a means of protecting unfettered ingress to and egress from the clinic, and ensuring that petitioners do not block traffic on Dixie Way. The state court seems to have had few other options to protect access given the narrow confines around the clinic." *Madsen*, 512 U.S. at 769.

Petitioner is an anti-abortion activist who opposes many of the services provided by the clinic and has repeatedly violated the injunction upheld by this Court by entering the 36-foot buffer zone around the clinic in an effort to inhibit individuals from seeking the clinic's services. Workers at the clinic frequently have been forced to call the local police to enforce the injunction against Petitioner. On three separate occasions Melbourne, Florida police officers were forced to physically remove Petitioner from the buffer zone for

violating the terms of the injunction. These three arrests are the basis for Petitioner's present petition for certiorari to this Court.

In the proceedings below, the district court granted summary judgment against Petitioner because Petitioner failed to put forward any evidence to support his claim that the clinic controlled the Melbourne City Police, or that the police were acting as agents of the clinic. *Raney v. Aware Woman Center for Choice, Inc., et al.*, No. 97-1197-CV-ORL-19B (M.D. Fla. filed Feb. 26, 1999), Petitioner's Appendix (hereinafter "Pet. App.") 6a-7a. The district court subsequently denied Petitioner's motion to amend the judgment. Pet. App. 12a. The United States Court of Appeals for the Eleventh Circuit upheld both actions by the district court. *Raney v. Aware Woman Center for Choice, Inc., et al.*, 224 F.3d 1266 (11th Cir. 2000). The court of appeals reaffirmed the district court's finding that the record revealed only that clinic workers had notified the police when its patients needed protection, and had cooperated with the police when necessary to enforce the injunction. *Id.* at 1268. The court of appeals thus affirmed the district court's holding that none of the evidence substantiated Petitioner's claim that the clinic controlled the police. *Id.* The court of appeals further affirmed the district court's rejection of Petitioner's claims under the Freedom of Access to Clinic Entrances Act, 18 U.S.C. § 248 (2000) (hereinafter "FACE"). The court held that Petitioner's actions on the sidewalk outside the clinic did not constitute the sort of reproductive health services "in a facility" contemplated by the relevant provisions of the FACE Act. *Id.* at 1269.

## REASONS FOR DENYING THE WRIT

Petitioner asks this Court to grant certiorari based on a variety of vague contentions, none of which warrant this Court's review. Petitioner lists a total of ten issues purportedly raised by this case. Each of these issues is phrased cryptically, but no issue can be interpreted in a way that would justify a grant of Petitioner's writ. In the argument pertaining to issues two through six of the petition, Petitioner essentially asks this Court to rewrite its entire abortion rights jurisprudence, starting with *Roe v. Wade*. Petitioner seeks to use decisions that were intended to foster an individual woman's right to choose abortion and other reproductive health services as a tool to facilitate the obstruction of those very services. This is an illogical reading of those decisions, and in any event does not present an issue that falls within the category of cases this Court has deemed worthy of certiorari. *See* S. Ct. Rule 10.

Petitioner's seventh issue asserts that the police who arrested Petitioner were acting as the "agents" of the clinic. This misconstrues the facts of this case, and rests on the invalid legal assumption that simply by protecting one party's rights the police are acting as the "agents" of that party. The only legal support Petitioner can muster on this issue is a fifty-seven year-old Florida Supreme Court decision dealing with the Florida state tort law of false imprisonment and false arrest. Since this issue is entirely a matter of state law, it is therefore outside the scope of this Court's certiorari authority.

Petitioner's first, eighth, ninth, and tenth issues relate to the application of the federal FACE Act to Petitioner's intrusion into the 36-foot buffer zone established by the *Madsen* injunction. The exact nature of Petitioner's claim

regarding FACE is unclear, but he seems to make the bizarre contention that the statutory protection of reproductive health facilities against intrusion should be read to protect those who *do* intrude into those facilities and inhibit patients from obtaining health services. This interpretation is obviously inconsistent with both FACE and the injunction upheld by this Court in *Madsen*, and therefore warrants no further review by this Court.

## ARGUMENT

### I. THIS COURT'S ABORTION JURISPRUDENCE DOES NOT PROTECT THE INTENTIONAL OBSTRUCTION OF ABORTION SERVICES

In the portion of his Petition discussing issues two through six, Petitioner claims that the decisions below conflict with a number of this Court's abortion rights decisions over the last quarter century. The precise contours of this claim are unclear, but each of the three separate contentions Petitioner makes in support of his position are inconsistent with settled case law.

First, Petitioner argues that the state's interest in protecting the health of pregnant women allows him to violate the buffer zone established by the *Madsen* injunction. *See* Petition at 10. The discussion of health interests in this Court's decisions such as *Roe v. Wade*, 410 U.S. 113 (1973), *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833 (1992), and *Stenberg v. Carhart*, 530 U.S. 914 (2000), to which Petitioner seems to refer, relates to the state's interest in enacting narrowly drawn statutes to protect women from dangerous medical practices or provide women with information supplied by the government to assist them in making health care choices. Nothing in those cases endows

this renegade protester with the right to intrude into a legally protected zone around a particular clinic to provide his own idiosyncratic version of "localized or clinic-specific truthful information . . . to every customer of every abortion clinic." Petition at 11. While the First Amendment protects the right of protesters to present such information outside the confines of the clinic, this Court expressly held in *Madsen* that the First Amendment does not guarantee this sort of protester the right to foist himself on the clinic's patients in the 36-foot buffer zone around the facility.

Petitioner's second contention is that this Court's decisions in *Schenck v. Pro-Choice Network*, 519 U.S. 357 (1997), and *Hill v. Colorado*, 120 S. Ct. 2480 (2000), established a constitutional right to stand at the clinic entrances or "next to the doorway of abortion clinics," Petition at 12, while protesting the clinic's provision of abortion. Neither of these cases upholds that principle or grants such a right.

In *Schenck* this Court overturned an unconstitutionally overbroad "floating buffer zone," but specifically reaffirmed its holding in *Madsen* that

> the governmental interests underlying the injunction in *Madsen* — ensuring public safety and order, promoting the free flow of traffic on streets and sidewalks, protecting property rights, and protecting a woman's freedom to seek pregnancy-related services — also underlie the injunction here, and in combination are certainly significant enough to justify an appropriately tailored injunction to secure unimpeded physical access to the clinics.

*Schenck*, 519 U.S. at 376 (citations omitted).

Likewise, in *Hill* this Court upheld a Colorado statute that made it a criminal offense to come within eight feet of a person entering or exiting a health facility "for the purpose of passing a leaflet or handbill to, displaying a sign to, or engaging in oral protest, education, or counseling with such other person in the public way or sidewalk area within a radius of one hundred feet from any entrance door to a health care facility." Colo. Rev. Stat. S 18-9-122(3) (1999), *quoted in Hill*, 120 S. Ct. 2484 n.1. This statute actually established a much broader zone of limitation on anti-abortion speech than the 36-foot buffer zone approved in *Madsen*, which the Petitioner has repeatedly violated. The Petitioner's notion that *Hill* provides a right of anti-abortion protesters to stand "next to the doorway of abortion clinics" is simply inaccurate.

Petitioner's third contention is a blunt assertion that this Court should overrule *Madsen* because this Court was "wrong" to assume that clinic workers "could be trusted not to misuse a powerful private injunction." Petition at 9. Petitioner claims that he was "threatened and dragged away from a public forum" by "hired gunmen working for the Windles under the pretext of enforcing the *Madsen* injunction." *Id.* The so-called "hired gunmen" were actually officers of the Melbourne Police Department engaged in their official duties. It borders on the frivolous to suggest that the police are acting inappropriately when enforcing an injunction that this Court specifically reviewed, approved, and then reaffirmed less than a year ago in *Hill*. Petitioner's allegations about the application of this Court's other abortion precedents are equally weak and none of these claims come close to articulating a legal issue substantial enough to justify granting Petitioner's writ.

## II. PETITIONER'S CLAIM THAT THE POLICE WERE ACTING AS THE "AGENTS" OF THE CLINIC IS LEGALLY INACCURATE AND FAILS TO STATE A FEDERAL CLAIM

Petitioner devotes several pages to the argument that the police who arrested him for violating the *Madsen* injunction were acting as "agents" of Respondents Edward and Patricia Windle. *See* Petition at 6-8. The apparent object of this exercise is to hold Mr. and Mrs. Windle liable under the FACE Act for the actions of the police. Aside from the fact that the police have done nothing to violate FACE (*see* Section III *infra*[1]), Petitioner is mistaken even in his application of basic agency law. The court of appeals noted in its decision that the standard definition of "agency" involves "a fiduciary relation which results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and consent by the other so to act." *Raney*, 224 F.3d at 1268 (quoting Restatement (Second) of Agency § 1(1) (1958)). The court also noted that:

> The affidavits submitted in support of Raney's claim establish only that city police were deployed to enforce the Madsen injunction on days when abortion procedures were performed at the Woman Center. While the record indicates that the

1. Petitioner has also brought an action against the City of Melbourne, claiming that the city's police department violated his rights under the FACE Act. The District Court for the Middle District of Florida granted the city's motion to dismiss for failure to state a claim, and the Court of Appeals for the Eleventh Circuit affirmed the dismissal. *Raney v. City of Melbourne, Florida*, No. 00-11403 (11th Cir. Nov. 15, 2000).

> Defendants cooperated with the police and notified them when the Woman Center's clients and employees would need protection, it does not suggest that the police were subject to the Defendants' control.

*Id.*

Respondents did nothing more in this case than any citizen would do if confronted with an intruder: They called the police and cooperated with the officers attempting to enforce the law. Other courts have been confronted with "agency" claims similar to the one Petitioner raises here, and have rejected such claims absolutely. To do otherwise would threaten the very structure of law enforcement. "It would be an unacceptable result to hold that, whenever law enforcement officers act on a citizen's complaint, they are automatically constituted the citizen's 'agent.' The absurdity of such a contention requires no comment." *Lott v. Burning Tree Club, Inc.*, 516 F. Supp. 913, 917 (D.D.C. 1980). *Accord McGeorge v. Continental Airlines, Inc.*, 871 F.2d 952, 955 (10th Cir. 1989) (rejecting claim that police are agents of private company where record provides no evidence that private company had the power to control the actions of the police officers); *Nelson v. Bulso*, 979 F. Supp. 1239, 1247 (E.D. Wis. 1997) (same); *Robinson v. Town of Colonie*, 878 F. Supp. 387, 408 (N.D. N.Y. 1995) (same).

In another variation on the agency theme, Petitioner argues that the decision below conflicts with a false imprisonment decision issued over fifty years ago by the Florida Supreme Court. *See* Petition at 14. It is unclear why Petitioner is asking this Court to grant a writ of certiorari to review a matter of state tort law. In any event, Petitioner

misconstrues the relevant law. The Florida Supreme Court case relied upon by Petitioner involved a situation in which the defendant swore out a warrant on an individual and then "maliciously and wrongfully" identified the wrong person to the police, who then acted on this information to arrest the innocent victim. *Johnson v. Weiner*, 19 So.2d 699, 699-700 (Fla. 1944).

Nothing of that sort occurred in this case. Petitioner does not deny that he was indeed the person who violated the injunction protecting the clinic, and the police did nothing more than act on accurate information to enforce the law. In these circumstances the Florida Supreme Court has specifically held that the *Johnson* rule does not apply. "[I]t is not enough for instigation that the actor has given information to the police about the commission of a crime, or has accused the other of committing it, so long as he leaves to the police the decision as to what shall be done about any arrest, without persuading or influencing them." *Pokorny v. First Federal Savings & Loan Assoc. of Largo*, 382 So.2d 678, 682 (Fla. 1980) (quoting Restatement (Second) of Torts, § 45A, Comment (c) (1965)). The Court further recognized that the public policy of encouraging citizens to assist the police required that the public be immune from liability in the absence of the sort of intentionally fraudulent misinformation evident in *Johnson*.

> Prompt and effective law enforcement is directly dependent upon the willingness and cooperation of private persons to assist law enforcement officers in bringing those who violate our criminal laws to justice. . . . Private citizens should be encouraged to become interested and involved in

> bringing the perpetrators of crime to justice and not discouraged under apprehension or fear of recriminations.

*Pokorny*, 382 So. 2d at 682 (quoting *Manis v. Miller*, 327 So. 2d 117 (Fla. 2d DCA 1976)).

In short, Petitioner's misapplication of a state-law issue regarding citizen liability for assisting police does not justify the grant of a writ of certiorari by this Court.

## III. THE FREEDOM OF ACCESS TO CLINIC ENTRANCES ACT DOES NOT PROTECT THE RIGHT OF PROTESTERS TO INTRUDE INTO HEALTH CLINICS AND IMPEDE PATIENT ACCESS TO THOSE CLINICS

Petitioner's final set of claims pertains to the application of the FACE Act. Petitioner claims that the FACE Act protects his intrusion into the buffer zone defined by the *Madsen* injunction. Stripped to its essence, Petitioner seems to argue that a federal statute enacted to protect reproductive health clinics from physical obstruction and harassment bars enforcement of an injunction issued for the purpose of protecting Respondent clinic from such physical obstruction and harassment. This facially absurd claim depends on the equally absurd premise that someone trespassing on the property of a reproductive health clinic for the purpose of inhibiting that clinic's activities is nevertheless protected by the federal statute because that person has intruded into a "facility" as defined by the FACE Act.

The FACE Act does not cover the behavior of the Petitioner because he was not "in a facility" as defined by

the statute. As the court of appeals noted in rejecting Petitioner's assertions below, a FACE Act claim can be brought only by someone "involved in providing or seeking to provide, or obtaining or seeking to obtain, services in a facility that provides reproductive health services." 18 U.S.C. § 248(c)(1)(A), *quoted in Raney*, 224 F.3d at 1268. Petitioner was not "involved in providing or seeking to provide" services at the facility where he was arrested; he was engaged in behavior intended to *prevent* the provision of services at that facility. Petitioner argues that the FACE Act definition of "facility" includes "the walled portion around the clinic and the parking lot and the sidewalks in the *Madsen* buffer zone." Petition at 8. With regard to doctors, workers, and patients at the clinic, this area may well be part of the "facility" protected by the provisions of the FACE Act. But Petitioner was not a doctor, worker, or patient at the clinic, nor was he otherwise associated with the clinic in any way. Instead, he was attempting to thwart the work of the clinic, in direct violation of an injunction, and was arrested for that reason. To construe the FACE Act to protect his behavior would turn the statute on its head and convert a statute intended to shield clinics from hostile attacks into a sword for those who would engage in such attacks.

Petitioner devotes two entire sections of his Petition to the argument that the court of appeals "has completely rewritten F.A.C.E.," Petition at 15, and "deprived the counselor of F.A.C.E. protection because of his volunteer status," Petition at 16. Petitioner apparently misunderstands the thrust of the court of appeals' holding. The court of appeals simply recognized that the FACE Act was enacted to protect institutional providers of reproductive health care, including "a hospital, clinic, physician's office, or other facility." 18 U.S.C. § 248(e)(1). Petitioner does not fall within

this category because he is an individual who is "not *attached to* recognized providers of reproductive healthcare." *Raney*, 224 F.3d at 1269 (emphasis added).

Nothing in the court of appeals opinion indicates that the statute would not cover a volunteer who *is* attached to a reproductive health facility and is "involved in providing or seeking to provide, or obtaining or seeking to obtain, services." 18 U.S.C. § 248(c)(1)(A). This is the holding of *United States v. Dinwiddie*, 76 F.3d 913 (8th Cir.), *cert. denied*, 519 U.S. 1043 (1996), which Petitioner cites in support of his position. The precise language used by the Eighth Circuit, however, indicates why this case does not help Petitioner's cause. The Eighth Circuit noted that

> A building that houses an abortion clinic "provides" reproductive-health services because it is an integral part of a business in which abortions are performed and pregnant women are counseled. The same logic applies to workers at an abortion clinic — [the clinic doctor] could not do his job without either Planned Parenthood's "facility" or its workers.

*Dinwiddie*, 76 F.3d at 927. *Dinwiddie* does not support Petitioner's claim because he is an unwanted intruder into the facility in this case; he is not "an integral part of a business in which abortions are performed and pregnant women are counseled." *Id.* The Eleventh Circuit Court of Appeals opinion below is entirely consistent with this conclusion.

If Petitioner were attached to an ongoing operation that provided reproductive health services of the type he advocates, and if his activities were undertaken inside a

facility devoted to that purpose, and if someone broke into that facility or attempted to obstruct that facility's operations, then he could possibly claim the protection of the FACE Act. *See* H. Rep. No. 103-306 103rd Cong., 1st Sess. 3 (1993): "[B]y covering reproductive health services and not merely abortion, the bill would apply to blockades by pro-choice advocates — should such blockades occur — outside clinics engaged in pro-life counseling or providing abortion alternatives." In contrast, using Petitioner's theory of FACE in the scenario described in the House Report on the FACE Act, pro-choice advocates would be permitted to enter a pro-life facility and provide information about abortion to the clients of that facility over the objections of the facility's owners and operators. Petitioner's reading of the FACE Act is a recipe for anarchy. Under his interpretation, all clinics would be compelled to grant access to anyone with a desire to "counsel" patients even if that advice encouraged the patient to ignore the opinions of the clinic's own doctors and staff. In contrast, the only logical way to read the FACE Act's protection of persons providing services in a "facility" is to assume that the statute protects those persons working with a particular facility to promote its purposes. The Act cannot logically be read to protect the hostile activities of individuals such as Petitioner, who are attempting to prevent the facility from rendering services, and whose specific intent is to inhibit its safe and efficient operation.

## CONCLUSION

The arguments raised by Petitioner do not warrant review by this Court. The Petition for Certiorari should be denied.

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